

PS 1320.05 FEDERAL TORT CLAIMS ACT



Program Statement

OPI: OGC
NUMBER: 1320.05
DATE: 6/28/2000
SUBJECT: Federal Tort Claims Act

1. **[PURPOSE AND SCOPE §543.30.** Pursuant to the Federal Tort Claims Act, a claim for money damages for personal injury or death and/or damage to or loss of property must be filed against the United States by the injured party with the appropriate Federal agency for administrative action. General provisions for processing administrative claims under the Federal Tort Claims Act are contained in 28 CFR part 14. The provisions in this subpart describe the procedures to follow when filing an administrative tort claim with the Bureau of Prisons.]

Under the Federal Tort Claims Act (FTCA), the government may be liable for the negligent or wrongful acts or omissions of its employees while acting within the scope of their employment.

- Ž Inmate work-related claims are not compensable under the FTCA's provisions. Such claims should be processed pursuant to the Inmate Accident Compensation Act at 28 CFR Part 345.
- Ž Federal employee work-related claims are also not paid under the FTCA's provisions. Such claims should be processed pursuant to the Federal Employee's Compensation Act at 5 U.S.C. § 2401.

2. **PROGRAM OBJECTIVE.** The expected result of this program is:

Appropriate compensation will be made under the Federal Tort Claims Act if individuals suffer proven monetary loss, personal injury, or wrongful death caused by an employee's negligent or wrongful act or omission, while the employee is acting within the scope of his or her employment.

[Bracketed Bold] - Rules
Regular Type - Implementing Information

3. DIRECTIVES AFFECTED

a. Directive Rescinded

PS 1320.03 Claims Under the Federal Tort Claims Act
 (1/4/93)

b. Directives Referenced

28 U.S.C. § 1346(b) United States as Defendant
28 U.S.C. §§ 2671 - 2680, Tort Claims Procedure

DOJ Order 2110.23C Filing and Settlement of Claims of
 Civilian Personnel for Damages to or
 Loss of Personal Property Incident to
 Service (12/13/91)

c. Rules Referenced

28 CFR 0.96 & 0.97, Delegation and Redelelegation of authority
28 CFR 0.172, Authority: Federal tort claims
28 CFR 14.1 through 14.11, Administrative Claims under FTCA
28 CFR 543.30 through 543.32, Claims under the FTCA

4. STANDARDS REFERENCED

a. American Correctional Association 3rd Edition Standards
for Adult Correctional Institutions: 3-4041, 3-4090, 3-4190,
3-4393

b. American Correctional Association 3rd Edition Standards
for Adult Local Detention Facilities: 3-ALDF-1B-15,
3-ALDF-1D-21, 3-ALDF-1D-22, 3-ALDF-3A-24, 3-ALDF-4G-07

c. American Correctional Association Standards for Adult
Correctional Boot Camp Programs: 1-ABC-1D-17, 1-ABC-1D-18,
1-ABC-3A-23

d. American Correctional Association 2nd Edition Standards
for Administration of Correctional Agencies: 2-CO-1D-09 and
2-CO-4E-01

5. DELEGATION OF AUTHORITY. The General Counsel and Regional
Counsel are delegated authority (28 CFR 0.97) to consider,
adjust, determine, compromise, settle, and pay federal tort
claims if the amount of a proposed adjustment, compromise,
settlement, or award does not exceed the amount specified in
28 CFR 0.172.

6. [FILING A CLAIM §543.31

a. Who may file a claim? You may file a claim if you are the injured person or the owner of the damaged or lost property. A person acting on your behalf as an agent, executor, administrator, parent, guardian, or other representative may file a claim for you if the person provides a written statement signed by you giving that person permission to act for you. A representative may also file a claim for wrongful death. If you hire a lawyer or authorize a representative to act on your behalf, the agency will correspond only with that representative, and will not continue to correspond with you.]

A claim may be filed by an inmate or a non-inmate (e.g. staff member, visitor, or private citizen). Should a settlement offer be made, the voucher will contain both your name and the name of your representative, if applicable.

Ž Regional Counsel staff will track all claims that are properly filed within their regions.

Ž Claims will not be closed until they are either settled, denied, rejected, or transferred to another agency pursuant to 28 CFR 14.2.

[b. Where do I obtain a form for filing a claim? You may obtain a form from staff in the Central Office, Regional Offices, Bureau institutions, or staff training centers.]

Staff will provide a Claim for Damage, Injury, or Death and Supplemental Instructions (SF-95) (available on BOPDOCS).

Ž A claim may also be filed without an SF-95 if the claimant provides all necessary information.

Ž Inmates should obtain forms from staff at the institution where they are incarcerated.

[c. Where do I file the claim? You may either mail or deliver the claim to the regional office in the region where the claim occurred. If the loss or injury occurred in a specific regional office or within the geographical boundaries of the region, you may either mail or deliver the claim to that regional office. If the loss or injury occurred in the Central Office, you may either mail or deliver the claim to the Office of General Counsel, Central Office. If the loss or injury occurred in one of the training centers, you may either mail or deliver the claim to the Associate General Counsel, Federal Law Enforcement Training

Center. 28 CFR part 503 lists Bureau institutions by region and also contains the addresses of the Central Office, regional offices and training centers.]

- Ž Institution staff will not accept claims submitted at the institution.
- Ž Claims submitted to the wrong location will be transferred to the appropriate Bureau Office.
- Ž If a claim is submitted to the Bureau in error, staff will forward it to the proper agency (the term "agency" includes executive departments, judicial and legislative branches, military departments, and independent establishments of the United States) or return it to the claimant if the agency cannot be identified.
- Ž Claims improperly filed with the Bureau will not be approved or denied.

7. [PROCESSING THE CLAIM § 543.32.]

a. Will I receive an acknowledgment letter? Yes. If you have provided all necessary information to process your claim (such as time, date, and place where the incident occurred, and a specific sum of money you are requesting as damages), you will receive an acknowledgment letter indicating the filing date and a claim number. The filing date is the date your claim was first received by either the Department of Justice or an office of the Bureau of Prisons. You should refer to your claim number in all further correspondences with the agency. Additionally, you must inform the agency of any changes in your address. If you fail to provide all necessary information, your claim will be rejected and returned to you requesting supplemental information.]

Regional Counsel and Office of General Counsel staff will date stamp all claims on the date they are received, whether the claims are received in the proper office.

- Ž A claim that is transferred to another Bureau office will be considered filed with that office when the claim was received by the first appropriate agency office.

Example: If a claim is received by the Department of Energy on October 12, then transferred to the Department of Justice on October 19, then transferred to the Central Office, Bureau of Prisons, on October 24, then transferred to a Regional Office on November 1, the proper date the claim is received would be October 19.

[b. Will I be notified if my claim is transferred? Yes. If your claim is improperly filed, you will be notified by the responsible office that your claim was transferred to another regional office, the Central Office, a training center, or another agency.

c. Will an investigation be conducted? Yes. The regional office ordinarily refers the claim to the appropriate institution or office for investigation. You may also be required to provide additional information during the investigation. Your failure to respond within a reasonable time may result in the rejection or denial of the claim.]

Ž The Warden at the institution will designate staff to investigate and prepare a report on the claim.

Ž Each institution will develop an Institution Supplement detailing procedures for such investigations.

The report, with the Warden's recommendation(s), is then forwarded to the appropriate Regional Counsel. The Regional Counsel's Office will track all outstanding claims until settled or denied.

Ž Claims properly filed in the Central Office will be investigated by Central Office staff.

A report, with the Assistant Director's recommendation(s), is then forwarded to the Office of General Counsel. The Office of General Counsel will track all outstanding claims in the Central Office until a claim is settled or denied.

The report will include:

Ž the SF 95 or other appropriate written form of notification;

Ž background materials (statements of witnesses, photographs, medical case descriptions), as necessary;

Ž relevant administrative remedy requests; and

Ž the CEO's (Warden or Assistant Director) conclusions

and recommendations.

A sufficient number of detailed photographs must be taken to provide the reviewing offices with a clear idea of the type and extent of damage, especially in the case of motor vehicle damage.

Claims alleging medical malpractice or improper medical care should be reviewed by institution health services staff. After this review, a clear case description must be provided including a history of all relevant medical treatment, medications, and services rendered to the claimant. A case description should also include any relevant medical justifications for the treatment rendered.

Ž Claims filed by inmates in the Witness Security Program (WITSEC) must be handled in the same manner as other claims except all correspondence and the resulting investigation must be sent through the Inmate Monitoring Branch, Correctional Programs Division.

[d. Who will decide my administrative claim? The Regional Counsel or his or her designee reviews the investigation and the supporting evidence and renders a decision of all claims properly filed in the regional office and within regional settlement authority. The Regional Counsel has limited settlement authority (up to an amount established by the Director, Bureau of Prisons). After considering the merits of the claim, the Regional Counsel may deny or propose a settlement of the claim. The General Counsel will investigate and propose settlement for all claims properly filed in the Central Office in accordance with delegated settlement authority. If the proposed settlement exceeds the General Counsel's authority, the General Counsel will seek approval from the appropriate Department of Justice officers.

e. Will my claim be reviewed by or referred to the Central Office? If the Regional Counsel recommends a proposed settlement in excess of the settlement authority, the claim will be forwarded, with a recommendation, to the Office of General Counsel, Central Office for their review.

f. Will appreciation or depreciation be considered? Yes. Staff will consider appreciation or depreciation of lost or damaged property in settling a claim.]

Depreciation guidelines and **Table of Rates of Depreciation** are provided in DOJ Order 2110.23C (available on BOPDOCS).

[g. If my claim is denied or I am dissatisfied with a settlement offer, what are my options? If your claim is denied or you are dissatisfied with a settlement offer, you may request, in writing, that the Bureau of Prisons reconsider your claim in the administrative stage. You should include additional evidence of injury or loss to support your request for reconsideration. If you are dissatisfied with the final agency action, you may file suit in an appropriate U.S. District Court as no further administrative action is available.]

If the Regional Counsel reviews a claim and determines that a settlement is in the best interest of the government, a settlement offer may be made to the claimant.

- Ž In some cases, the Regional Counsel may also determine that negotiations with the claimant may facilitate a settlement of the claim. In these cases, negotiations with the claimant should begin at the earliest possible stage of the claim.
- Ž The Regional Counsel have settlement authority up to \$2,500. For regional claims, if a proposed settlement amount is in excess of \$2,500, the claimant must be advised that the proposed settlement agreement is pending the approval of the General Counsel.
- Ž The General Counsel has settlement authority up to \$10,000.
- Ž If a proposed settlement agreement is more than \$10,000, the claimant must be advised that settlement is pending the approval of the General Counsel and the Torts Branch, Civil Division, Department of Justice.

If a tentative settlement amount in excess of \$2,500 can be reached with the claimant, the Regional Counsel must forward the claim to the Office of General Counsel for review and determination.

- Ž Regional Counsel are to provide the Office of General Counsel with the complete investigation report and copies of all supporting materials (as described in implementing text above), all information on the merits of the claim, and a recommendation for the claim's disposition. If the recommended settlement agreement exceeds \$10,000, the proposed settlement agreement will

be forwarded, with information on the claim's merits to the Torts Branch, Civil Division, Department of Justice for final approval.

Ž Settlement of claims approved by the General Counsel between \$2,500 but not more than \$10,000 will be forwarded to the Judgment Fund Section, Financial Management Service, Department of Treasury for payment.

Ž Payment of claims below \$2,500 will be paid from institution funds of the institution where the claim arose.

[h. What if I accept a settlement of my claim? If you accept a settlement, you give up your right to bring a lawsuit against the United States or against any employee of the government whose action or lack of action gave rise to your claim.

i. How long will it take to get a response? Generally, you will receive a decision regarding your claim within six months of when you properly file the claim. If you have not received a letter either proposing a settlement or denying your claim within six months after the date your claim was filed, you may assume your claim is denied. You may proceed to file a lawsuit in the appropriate U.S. District Court.]

/s/

Kathleen Hawk Sawyer
Director